

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BOS:TL-N-2999-01

date: **JUN 20 2001**

to: Kevin Benner
Team Manager, Group 1128, LMSB:FS

from: David N. Brodsky
Associate Area Counsel, CC:LMSB:FS:BOS

subject: Form 872

LEGEND:

Target	=	[REDACTED] EIN: [REDACTED]
Mutual Holding	=	[REDACTED] EIN: [REDACTED]
Stock Holding	=	[REDACTED] EIN: not presently available
State A	=	[REDACTED]
State B	=	[REDACTED]
State A statute	=	[REDACTED] Stat. Ann. tit. 8, § 3441 (Supp. 1999)
Date 1	=	[REDACTED]
Date 2	=	[REDACTED]
Date 3	=	[REDACTED]

This memorandum responds to your request for assistance dated May 4, 2000. This memorandum should not be cited as precedent.

You asked for advice concerning the language that should be included on future statute extensions (Forms 872) for the tax years prior to the restructuring in which Target was converted from a

mutual insurance company to a stock insurance company pursuant to the law of State A.

Target, an accrual basis calendar-year taxpayer, was the parent of an affiliated group of corporations filing a life-nonlife consolidated federal income tax return. Prior to the restructuring, the Target policyholders held the proprietary interest in Target ("membership interests"). Pursuant to State A statute, and under a plan of reorganization approved by the State A Commissioner of Insurance on Date 1, the following steps were undertaken to restructure the Target affiliated group:

- (i) Target organized Mutual Holding, a State A corporation.
- (ii) Mutual Holding organized Stock Holding, a State B corporation.
- (iii) On Date 3, Target was converted into a stock company. In the conversion, the membership interests of the Target policyholders were extinguished and the policyholders became members of Mutual Holding by operation of law.
- (iv) On Date 3, Target issued its shares to Mutual Holding, which then contributed the shares to Stock Holding. As a result, Target became a wholly owned subsidiary of Stock Holding.

State A statute provides that the stock insurance company continues the corporate existence of the converted mutual insurance company as a stock insurance company subsidiary of the mutual insurance holding company.

On Date 2 and prior to the effective date of the reorganization, Target received a private letter ruling on the federal income tax consequences of the proposed transaction. Based on the information and representations submitted by Target under penalties of perjury, the Assistant Chief Counsel (Corporate) ruled, *inter alia*:

- (i) that the conversion of Target from a mutual insurance company to a stock insurance company and the (deemed) exchange of Target membership interests for Target stock would be a reorganization within the meaning of section 368(a)(1)(E) of the Internal Revenue Code, and
- (ii) that under section 1.1502-75(d)(2)(ii) the affiliated group of which Target was the common parent immediately before the proposed transaction would remain in existence with Mutual Holding as the new common parent.

The private letter ruling was issued with the standard caveat that the facts submitted by Target had not been verified by the office that was issuing the ruling, and verification might be required as part of the audit process. The ruling was also conditioned on Target's being considered the same entity before and after its conversion to a stock entity.

Section 1.1502-77(a) provides that the common parent, with limited exceptions, is the sole agent for a consolidated group in all matters relating to the tax liability for the consolidated return year. Section 1.1502-77(e) cross references § 1.1502-77

Section 1.1502-77T provides alternative agents for a consolidated group when the common parent of the group ceases to be the common parent. Section 1.1502-77T(a)(3) provides that a waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in section 1.1502-77T(a)(4) is deemed to be given by the agent for the group. Section 1.1502-77T(a)(4)(i) provides that the common parent of the group for all or any part of the year to which the notice or waiver applies is an alternative agent. Section 1.1502-77T(a)(4)(iv) provides that if the group remains in existence under section 1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given is an alternative agent.

In this case, both Target and Mutual Holding are alternative agents under § 1.1502-77T. Target was the common parent of the group for the tax years ending prior to the restructuring and its corporate existence continues as a stock company. Target thus is an alternative agent under § 1.1502-77T(a)(4)(i). Following the restructuring, and assuming that the factual information provided by the taxpayer in connection with the private letter ruling were correct, the affiliated group of which Target had been the common parent remained in existence with Mutual Holding as new common parent. Accordingly, Mutual Holding is an alternative agent under § 1.1502-77T(a)(4)(iv).

Assuming that you are obtaining a statute extension from Target, this office recommends that the taxpayer be identified on the Form 872 as follows:

*Target (EIN:xx-xxxxxxx), as agent for the members of the Target and Subsidiaries consolidated group.**

This office also recommends that the taxpayer identification number of Target be inserted in the block at the top right portion of the Form 872, and that the sentence "*This is with respect to the Target and Subsidiaries consolidated group for the taxable years 19XX-19XX." be inserted at the bottom of the form.

This office recommends that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 121.2.22.3 requires use of Letter 907(DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that § 3461 of the IRS Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, Publication 1035, "Extending the Tax Assessment Period," must be given to the taxpayer when you solicit the statute extensions.

THIS DOCUMENT MAY CONTAIN CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, INCLUDING THE TAXPAYER INVOLVED, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER THAT IS SUBJECT TO I.R.C. § 6103.

Maura Sullivan
Attorney
(LMSB)